



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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**Massachusetts Department of Telecommunications & Cable
2008 Annual Report**

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Introduction

The mission of the Department of Telecommunications and Cable (“DTC” or “Department”) is to regulate the telecommunications and cable industries in accordance with statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; to promote competition and protect consumers consistent with the public interest, including investigating and responding to carrier and consumer inquiries and complaints related to telecommunications and cable services; and to provide expert input, as requested by the Administration, to the development of telecommunications-related policies for the Commonwealth.

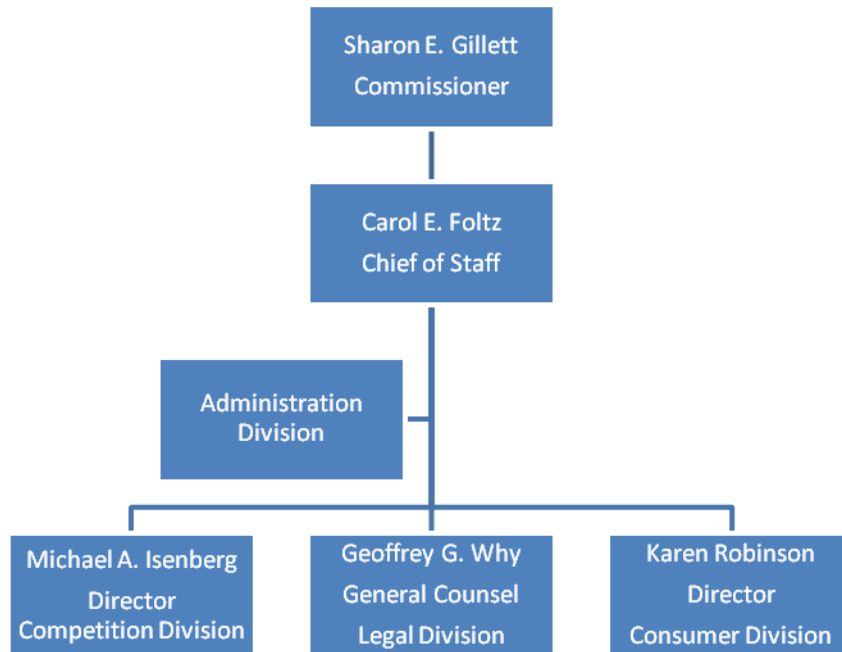
This report summarizes the responsibilities of the various staff divisions within the Department, provides details about the day-to-day functions of the agency and provides information about specific activities and accomplishments during 2008.

Those accomplishments include:

- The DTC provided expert input to support the development of legislation filed by Governor Patrick that established a \$40M Massachusetts Broadband Incentive Fund, Chapter 231 of the Acts of 2008. The purpose is to ensure that all Massachusetts communities have high-speed access to the Internet by 2010.
- The DTC issued 15 formal decisions spanning the continuum of the Department’s regulatory activities, including several cable rate orders that ensure that basic cable rates remain reasonable, consumer adjudicatory orders that enforce the Department’s slamming regulations, a decision to ensure reasonable service quality in a rural Western Massachusetts community, and several orders resolving disputes between competing telephone companies.
- The DTC advocated on behalf of Massachusetts consumers and businesses before the Federal Communications Commission and other federal policymakers by filing comments, for example, in support of ways to increase telecommunications competition and promote consumer interests, improved broadband data collection, and reform universal service and intercarrier compensation mechanisms. In 2008, the Competition Division actively monitored approximately 30 FCC proceedings and submitted comments and ex parte filings in several proceedings of particular importance to Massachusetts. Arguing on behalf of Massachusetts consumers, several of the Department’s filings to the FCC provided arguments in favor of state regulation of fixed voice over internet protocol (“VoIP”) telephone service.

Organizational Chart

Department of Telecommunications and Cable December 31, 2008



Administration Division

The Department of Telecommunications and Cable is funded through an annual assessment to telecommunications and cable companies as authorized by the annual General Appropriations Act, line item 7006-0071 and pursuant to Chapter 25C, section 7 of the Massachusetts General Laws and Article 87 of the Acts of 2007. The Department's operating budget for FY2008 was \$2.47 million. Any unexpended balance is credited to the next year's assessment.

The Administration Division provides administrative support to the Department.

Finance

The Division handles budget preparation and controls, public relations, information technology, purchasing, accounts receivable and payable, human resources, and administrative services. This Division also serves as liaison to the Office of Consumer Affairs and Business Regulation, the Fiscal Affairs and Human Resources Divisions in the Executive Office for Administration and Finance and the Legislature.

Communications

The Administration Division responds to legislative and media inquiries, prepares speaking points and briefing materials for the Commissioner, Consumer Affairs and others on telecommunication and cable issues. In addition, Division staff writes and publish consumer advisories on topical issues.

Legal Support

The Division is responsible for publishing notices of all Department public hearings. In Calendar Year (CY) 2008, the Department conducted a total of 10 hearings. The Division also processes all docket filings and Orders issued by the Department including management of record retention. Staff processed 15 decisions to multiple parties and intervenors in the Department's dockets in CY 2008. Additionally, staff responded to hundreds of requests for information regarding docketed matters. The DTC also successfully entered into a Memorandum of Agreement with the Department of Public Utilities regarding jurisdiction over pole attachment cases.

Information Technology

Division staff is responsible for the smooth operation of the information technology systems, the telephone system and the website. IT staff is shared with the Office of Consumer Affairs and Business Regulation. In CY 2008, IT staff completed infrastructure upgrades, including system to Windows Vista.

Competition Division

Overview

The Competition Division provides technical support to the Commissioner of the Department, as well as to the Department's Legal and Consumer Divisions and other officials, in the regulation of the telecommunications and cable industries in Massachusetts. The telecommunications industry over which the Department has jurisdiction is made up of common carriers, including local exchange carriers, interexchange carriers, operator service providers, and pay-telephone companies. The cable industry in Massachusetts is comprised of 10 cable television providers serving over two million cable subscribers in 308 of the Commonwealth's 351 cities and towns. The mission of the Competition Division is to ensure that telecommunications and cable companies provide their customers with the most reliable services at the lowest possible cost, in accordance with state and federal statutory obligations; to promote competition; and to protect consumers consistent with the public interest.

As noted above, pursuant to Chapter 19 of the Acts of 2007, the Department of Telecommunications and Energy was dissolved in April 2007. Jurisdiction over telecommunications and cable matters was placed in the newly-established Department (i.e., the DTC). All telecommunications and cable authority and cases were transferred to the Department's Telecommunications and Cable Television Division.¹

Shortly thereafter, the Department merged the separate Cable and Telecommunications Divisions, to form the Competition Division, in order to increase efficiencies by taking advantage of synergies created by convergence in these industries.

¹ In 1971, the Legislature established the Massachusetts Community Antenna Television Commission ("Cable Commission"). In 1997, the Cable Commission was merged into the Department of Telecommunications and Energy as the Cable Television Division.

Telecommunications Regulation

Introduction

The Competition Division's major telecommunications-related responsibilities are:

Promote Competition

- Revise existing policies and develop new policies in response to new technologies and market conditions;
- Collect and compile data on the status of competition in the communications industries in Massachusetts, and prepare an annual report summarizing the findings;
- Develop and implement policies that promote competition in areas of the state where it lags;
- Develop and enforce policies to promote wholesale and retail competition;
- Implement competition-related rule changes consistent with federal law;

Wholesale Regulation

- Set rates at which carriers can lease parts of each other's networks - this applies in particular to incumbent local exchange carriers' networks. In Massachusetts, the state's primary incumbent local exchange carrier is Verizon.
- Establish the terms and conditions under which facilities-based carriers interconnect their networks, exchange traffic and generally conduct their business relationships;
- Resolve disputes between competing carriers over wholesale rates and service issues;
- Establish and enforce wholesale service quality standards for Verizon so that it does not discriminate against competing carriers in providing wholesale services;
- Set the rates at which competitors can resell Verizon's retail services;
- Ensure that competing carriers do not create barriers to consumer choice (e.g., enforce number porting requirements);
- Enforce phone number allocation rules (i.e., monitor use of telephone numbers by carriers and promote number conservation to ensure an adequate supply of telephone numbers for the industry and to prevent the need for new area codes);

- In coordination with the Department of Public Utilities, ensure access to rights-of-ways for all carriers by establishing and enforcing rules concerning the rates and access to utility poles and conduits;

Retail Regulation

- Develop and enforce policies to promote retail competition, including policies that relax regulation where market forces are sufficient to protect consumer interests;
- Regulate certain Verizon retail services for which it still retains market power;
- Regulate rates, services, and practices of four small rural incumbent local phone companies that are considered to have market power in their service territories;
- Set rates and monitor service quality for inmate calling services, which are considered “monopoly” services;
- Ensure that reasonable service quality is provided by all carriers;

Consumer Regulation

- Establish and enforce basic consumer protections (e.g., enforce the Department’s billing and termination requirements, including elderly disconnect rules, and chat line blocking rules);
- In coordination with the State 911 Department, ensure access to quality telecommunications services for persons with disabilities (e.g., determine which new services should be adopted, monitor service quality, ensure adequate funding of programs, etc.);
- Monitor and enforce low-income discount programs (Lifeline/Linkup) and conduct outreach to promote subscribership;
- Enforce consumer privacy laws;
- Investigate the need for “public interest” payphones, and ensure that payphone providers comply with labeling and rate information requirements to prevent price gouging;
- Adjudicate “slamming” complaints, complaints between small and medium-sized business customers and carriers, and service quality complaints from various customer groups and municipalities;
- Serve as a source of technical knowledge for the Consumer Division in resolving/adjudicating complaints from residential customers;

Public Safety/Network Reliability Regulation

- Help to ensure adequate funding of the E-911 network (i.e., oversee the cost of the network and establish the retail surcharge to fund the network) and to provide oversight of the State 911 Department's expenditures, pursuant to Chapter 223 of the Acts of 2008;
- Facilitate quick resolution of wholesale and retail service outages by working closely with carriers;
- Enforce Verizon's major extended service outage rules, which are intended to address prolonged outages affecting 200 or more customers;
- Periodically review for adequacy the carrier network reliability plans;
- Enforce Verizon's central office collocations security rules;

Market Entry and Exit Regulation

- Review new registrations from companies seeking to provide telecommunications services in Massachusetts;
- Review individual tariff filings that would implement new service offerings or change the rates, terms or conditions of existing service offerings;
- Enforce entry requirements to ensure that no carriers are operating illegally in Massachusetts;
- Facilitate a smooth, orderly process when carriers discontinue services or exit the market entirely to prevent disruption of service to customers;
- Approve transfers of ownership and control for certain carriers;
- Review and approve applications for "eligible telecommunications carrier" status (ETCs must meet certain service obligations to be eligible to receive federal universal service funds);

Information/Advocacy Role

- Analyze major federal legislative and regulatory decisions to evaluate their impact on state regulation of the telecommunications industry, and when appropriate, advocate on behalf of Massachusetts consumers before the Federal Communications Commission ("FCC") and Congress;
- Explain Department regulations and policies, and provide other information as requested to consumers, carriers, public officials, the Legislature, the Administration, etc.;

- Monitor and evaluate proposed state legislation, and provide recommendations to the Administration;
- Participate in regional and national regulatory associations to ensure that Massachusetts consumer interests are represented; and
- Comply with periodic or annual FCC reporting requirements.

Regulatory Framework

The Telecommunications Act of 1996 led to major changes in the telecommunications industry and how it is regulated. Foremost amongst the changes was the growth of competition in all markets, particularly the local exchange market. The dramatic increase in competition, spurred in large part by technological innovation, has required that the Department adjust its regulations to reflect changes in market conditions and relax its regulations where market forces are sufficient to protect consumer interests, thereby ensuring that the Department continues to promote competition. At the same time, however, where market forces are not sufficient to safeguard consumer interests, the Department has continued to enforce necessary protections.

The Department has jurisdiction over telecommunications services that originate and terminate within or between each of Massachusetts' two federally-designated "Local Access and Transport Areas." ("LATAs").² The FCC generally regulates interstate and international services.

Retail Services – Market Entry

To reduce barriers to market entry and encourage competition for telecommunications service in Massachusetts, the Department has a streamlined registration process for companies wishing to do business as carriers within the state. Previously, the Department conducted an investigation into the financial, managerial, and technical abilities of a carrier to offer service. The Department now permits carriers to offer service based simply on the submission of a Statement of Business Operations and a tariff. The streamlined entry process permits the Department to devote greater resources and staff time to other responsibilities.

Wholesale Services – Market Entry

Apart from building their own facilities to serve customers, carriers who wish to compete in the retail telecommunications market have two modes of entry available to them. One of these is to lease unbundled network elements from the

² The Western Massachusetts LATA consists of the 413 area code; all other area codes in the state fall under the Eastern Massachusetts LATA.

“incumbent” local exchange carrier³ or another carrier and provide service over this leased network. The Department has authority over Verizon’s wholesale provision of unbundled network elements, ensures that they are provided in a non-discriminatory manner, and regulates the rates at which they are leased.

The other way a carrier can enter the market is to purchase a service from another carrier (usually Verizon) at a predetermined wholesale discount rate, then brand the service with its own name and resell it. The Competition Division develops the wholesale discount rate for Verizon pursuant to FCC methodology.

Payphone Providers

Many companies in addition to Verizon own and operate payphones in Massachusetts. In a 1986 Order, the Department held that all payphones must have labels clearly identifying the owner/operator of the phone, and must provide free access to 911 and directory assistance. The Department ensures that Verizon provides the lines necessary to provide payphone service on a non-discriminatory basis to all companies seeking to offer the service. During 2008, the Department registered one new payphone provider. Payphone providers are not required to file tariffs.

Telecommunications-related Responsibilities

Review of New Registrations

Telecommunications carriers wishing to do business in Massachusetts must file a Statement of Business Operations and a tariff with the Department. The statement includes a general description of the services to be offered by the carrier, contact information for customers who need to reach the carrier with questions or complaints, and a statement that the company has made all appropriate federal and state income tax filings and paid all income taxes. During 2008, the Department handled filings from 25 new carriers.

Review of Original and Amended Tariff Filings

The Competition Division reviews approximately 55 tariff filings in an average month, including new tariffs and amendments to existing tariffs. Competitive carriers are free to determine prices and service offerings based on what the market will bear (“market-based pricing”). The Competition Division reviews competitive carriers’ tariffs to make sure that they do not contain any terms or provisions that are in violation of Department policy (e.g. a carrier cannot offer service on the condition that a customer agrees not to contest any charges), but otherwise generally allows new tariffs to become effective as filed. Because Verizon is the “dominant” incumbent local exchange carrier, its tariffs receive

³ The “incumbent” local exchange carrier is the entity that owned the network prior to the introduction of competition (which is Verizon for all but four towns in Massachusetts).

greater scrutiny than those of competitive local exchange carriers (“CLECs”), although most of Verizon’s rates are subject to market-based pricing.

In mid-2007, the Department established an internal measurement to gauge its responsiveness to carriers in the tariff review process. The “tariff review metric” requires that the Department notify carriers within 14 days of receipt of a tariff filing that the filing has been received and is being processed. This performance metric is tracked internally on a monthly basis and reported quarterly in the Office of Consumer Affairs and Business Regulation’s “Consumer Report Card.” The Department met its tariff review performance goal 98% of the time in 2008.

Enforcement of Service Quality

Since the passage of the federal Telecommunications Act of 1996, the Massachusetts telecommunications market has experienced competitive growth in all sectors, including residential, business, urban and rural. In 1995, the Department adopted a Service Quality Plan for Verizon, consisting of twelve service quality metrics in the categories of Installation Service, Maintenance Service, and Service Response. Verizon reports its performance on each of the measures to the Department on a monthly basis. If Verizon’s performance falls below the Department’s threshold, Verizon pays a penalty in the form of a refund to all residential and business customers. By continuing to monitor Verizon’s quality of service, the Department ensures that Verizon, as the dominant local exchange carrier in Massachusetts, allocates sufficient resources for the maintenance of quality service to all customers, regardless of the level of competition the company faces in a particular market. Verizon’s service quality is also evaluated at the local level when the Department receives a formal complaint from city or town officials or customers. In 2008, the Competition Division actively investigated 3 telephone service quality disputes with Verizon: (1) the Competition Division concluded its service quality investigation for the town of Middlefield and determined that Verizon’s service quality was unreasonable – the issues were resolved and the docket was closed in December (D.T.C. 06-6); and (2) the Competition Division continued its investigations regarding telephone service quality complaints in the towns of Rowe and Hancock (D.T.C. 07-5 and 07-2, respectively). In addition, the department received a fourth petition in 2008 from the town of Shutesbury. Before docketing this complaint individually, the Department has issued a Notice of Inquiry asking for public input on whether the department should consolidate complaints from Western Massachusetts towns into a single regional investigation.

Enforcement - General

The Competition Division, in cooperation with the Legal Division, enforces a wide variety of laws, regulations, and policies. For example, under the Department’s “chat line” policy, carriers providing service to information service providers,

including chat line providers, are required to serve their information service provider customers exclusively with blockable telephone numbers. In addition, carriers are required to notify their end-user customers of the option to block outgoing calls to voice information services, including chat lines. In 2008, the Competition Division continued to ensure that carriers were complying with state statutes, rules, Department orders, and all other regulatory requirements. For example, the Competition Division conducted enforcement action against carriers operating without Department approval. Also, the Competition Division took action against carriers who failed to comply with statutory financial reporting requirements. The Department's methods for ensuring compliance include mass mailings notifying the industry of Department rules and regulations; issuing Notices of Probable Violation ("NOPVs"); opening investigations; issuing Orders to cease and desist; and referring violators to the Attorney General's Office for prosecution.

Analysis and Implementation of Major Federal Regulatory Changes

Decisions of the FCC, Congress, and state and federal courts affect the structure of the telecommunications industry and the Department's authority to regulate intrastate telecommunications services. Competition Division staff monitor large volumes of relevant case law from other agencies and jurisdictions to keep abreast of major issues that may influence the provision of telecommunications services within Massachusetts. In particular, the Competition Division monitors all new telecommunications-related dockets at the FCC to determine whether to participate in those proceedings as an advocate on behalf of Massachusetts consumers and/or to keep the Commissioner informed of the impact of those proceedings on Department policies. In 2008, the Competition Division actively monitored approximately 30 FCC proceedings and submitted comments and ex parte filings in several proceedings of particular importance to Massachusetts. Arguing on behalf of Massachusetts consumers, several of the Department's filings to the FCC provided arguments involving fixed voice over internet protocol ("VoIP") telephone service. Fixed VoIP is a telephone service increasingly being offered by companies throughout Massachusetts. The Department argued that, if the FCC considers it necessary to determine the regulatory classification of fixed VoIP for purposes of federal law, then the service should be declared a telecommunications service subject to state authority. In addition, the Department submitted comments in opposition to sweeping changes proposed to the inter-carrier compensation and universal service fund systems, which proposals would have harmed Massachusetts consumers.

Development of Policies to Address New Technologies and Market Conditions

The evolution of the telecommunications industry within Massachusetts has resulted in many new telecommunications service providers, new technologies, such as VoIP telephone service, and a plethora of new service offerings.

Because of the changing nature of the telecommunications industry, the Competition Division analyzes new technologies and market developments in order to determine their impact on customers. For example, in 2007, the Competition Division began work on establishing a new market monitoring function intended to report on the status of voice and video competition in Massachusetts on an annual basis. The Competition Division completed most of the work for this Competition Report in 2008, which is expected to be released in the spring of 2009.

Education and Public Information

The Competition Division devotes substantial staff time to explaining the Department's regulations and policies to potential and existing providers of telecommunications services, local and state officials, state and federal legislators, other Massachusetts agencies, the FCC and other state public utility commissions, and various other constituencies. Staff also devotes significant time to consumer inquiries and refers consumers to the Consumer Division for additional assistance. From time to time, the Department requires telecommunications carriers to develop customer education materials explaining major changes in the provision of services. The Competition Division reviews these education materials for technical accuracy. As needed, staff develops educational materials in response to industry changes, Consumer Division requests, or Department Orders. For example, in 2008 the Competition Division developed informational material for use by Consumer Division staff in response to consumer questions regarding the Department's role in the regulation of the cable industry and distinctions between the upcoming DTV Transition and cable operators' analog channel migrations.

2008 Telecommunications-related Accomplishments

During 2008, the Department provided continued support to the development of Governor Patrick's Broadband Initiative, providing expertise and advice, including DTC testimony, for legislation filed October 18, 2007, and signed into law by the Governor on August 4, 2008, which established a \$40 million Massachusetts Broadband Incentive Fund ("Fund") aimed at ensuring that all Massachusetts communities have high-speed access to the Internet by 2011. This support included assistance with the start-up of the Massachusetts Broadband Institute and its initial work to develop a solicitation for proposals from private companies to bring broadband to all unserved and underserved in Western Massachusetts.

In addition, the Competition Division helped to further reduce the backlog of telecommunications cases (i.e., cases that the Department acquired from the DTE) and resolved several new telecommunications cases opened in 2007 and 2008. Examples of important telecommunications investigations completed by the Competition Division include: (1) the approval of the Statewide Emergency Telecommunications Board's petition to establish a wireline E911 surcharge of

\$0.75 per month for the period of January 1, 2008, to June 30, 2008 (D.T.C. 07-7A); (2) the commencement and resolution of the Department's first "abbreviated" dispute resolution docket for competing telecommunications carriers (D.T.C. 08-2); (3) the implementation of Supreme Judicial Court findings on remand of an appeal of a Department Order concerning the resale of Verizon's services by a competitive provider and the commencement and resolution of a further outstanding issue deriving from this dispute (D.T.C. 07-12 and D.T.C. 08-4, respectively); (4) adjudication of several consumer complaints, including cases concerning allegations of slamming, the unauthorized switching of a consumer's telephone service (e.g., D.T.C. 07-SL-9, D.T.C. 07-SL-10, D.T.C. 07-SL-11, D.T.C. 07-SL-13, D.T.C. 08-SL-1, D.T.C. 08-SL-2); (5) review of motions for protective treatment of customer names under customer specific contracts (D.T.C. 06-57 and D.T.C. 06-58); and (6) due to the carrier's past questionable business practices, the denial of a carrier petition for designation as an Eligible Telecommunications Carrier made for the purposes of obtaining reimbursement from the federal Universal Service Fund for the provision of Lifeline and Link-Up services (D.T.C. 07-8).

A list of all Department Orders issued during 2008 is attached as Appendix A.

Cable Regulation

Introduction

What began 36 years ago -- through the establishment of the Massachusetts Community Antenna Television Commission -- as a service designed mainly to deliver off-the-air broadcast signals to rural and mountainous areas has become an \$1.65 billion industry in Massachusetts. While some households still rely on antenna reception, the principal alternative to cable television has been satellite television. However, in recent years, new entrants have emerged in the marketplace, such as competitive 'overbuilders' and municipally-owned companies. Principal among these competitive providers are telephone companies that have begun offering video service, as well as high-speed internet service, in competition with incumbent cable operators.

Cable television is regulated on the local, state, and federal level. The Competition Division regulates cable services principally pursuant to its enabling legislation, G.L. c. 166A, and implementing regulations at 207 C.M.R. § 1.00 et seq.

With respect to cable regulation, the Competition Division:

- Oversees cable television franchising, franchise renewal, and the transfer of cable franchises in the Commonwealth;

- Establishes basic service tier programming, equipment and installation rates for communities in Massachusetts that have requested rate regulation;
- Enforces consumer protection standards; and
- Collects, compiles, and maintains statistical data from cable providers on, among other things, rates, terms and conditions, market share, and financial performance.

Cable-related Responsibilities

Oversight of Municipal Cable Franchising

In Massachusetts, local municipalities act as the issuing authorities and negotiate and grant cable licenses, while the Competition Division retains oversight authority in licensing matters. The Competition Division conducts an extensive educational program for communities involved in the licensing process, regarding the applicable substantive and procedural requirements at the local, state, and federal levels. When licensing disputes arise at the local level, the Department serves as the appellate body.

Rate Regulation

In October 1992, Congress passed the Cable Television Consumer Protection and Competition Act, which provided for the regulation of cable television rates. Pursuant to this Act and G.L. c. 166A, the Competition Division regulates subscribers' rates for basic service tier programming, equipment, and installation in those Massachusetts communities that (1) have requested rate regulation and (2) do not have effective competition from a second cable operator, as determined by the FCC. The Competition Division reviews the proposed basic service tier rates to determine whether such rates are just and reasonable and in compliance with applicable federal law. Pursuant to federal law, rates for expanded cable or premium services are not regulated.

In 2008, the Competition Division reviewed basic service tier programming, equipment, and installation rates in 282 rate-regulated communities of Massachusetts. The Competition Division issued several rate orders, with respect to basic service tier programming, installation, and equipment rates applicable in these municipalities.

Consumer Protection and Education

The Competition Division, together with the Department's Consumer Division, investigates and resolves individual consumer complaints, either by informal negotiation between the consumer and the cable operator or by formal adjudicatory proceedings. The Competition Division also tracks patterns of complaints in order to identify and resolve more widespread problems. In 2008,

the Competition Division monitored analog migration developments by cable companies, to assist the Consumer Division in responding to consumer questions and developing information materials.

The Competition Division has adopted regulations designed to afford cable subscribers consumer protections, particularly with respect to billing and termination of service. The Competition Division requires each cable operator to make annual filings to ensure compliance with these consumer protection regulations. Through dedicated telephone lines, published consumer information, fact sheets, and a consumer-friendly website, the Competition Division serves as a source of information for consumers seeking to understand the options available to them, particularly as competition among cable operators increases across the Commonwealth.

2008 Cable-related Highlights

Cable regulation highlights in calendar year 2008 include:

- **Basic Tier Programming and Equipment Rates**

As part of its regular review, the Competition Division reviewed basic service tier programming and equipment rates for rate regulated Massachusetts communities in 2008 (see, e.g., D.T.C./C.T.V. 06-6 – Communities served by Cox Communications, D.T.C. 07-11 – Communities served by Charter Communications, and D.T.C. 08-1 – Communities served by Time Warner Cable) These reviews resulted in refunds or credits to Massachusetts subscribers exceeding \$11,000.00.

- **Initial Licensing by Competitive Provider**

As of the close of 2008, Verizon Communications holds a total of 90 franchises within Massachusetts including 27 awarded in 2008, and is pursuing franchises in additional communities. Verizon Communications currently has licenses in the communities of Abington, Acton, Andover, Arlington, Ashland, Bedford, Bellingham, Belmont, Boxborough, Boxford, Braintree, Burlington, Canton, Danvers, Dedham, Dover, Dunstable, Framingham, Franklin, Georgetown, Grafton, Hamilton, Hingham, Holliston, Hopkinton, Hudson, Ipswich, Lakeville, Lawrence, Leominster, Lexington, Lincoln, Littleton, Lynn, Lynnfield, Malden, Mansfield, Marion, Marlborough, Marshfield, Mattapoisett, Maynard, Medfield, Medway, Melrose, Methuen, Middleborough, Millbury, Middleton, Nahant, Natick, Needham, Newton, North Andover, Northborough, North Reading, Norfolk, Norwell, Norwood, Plymouth, Reading, Rochester, Rockland, Rowley, Sherborn, Southborough, Stoneham, Stowe, Stoughton, Sudbury, Sutton, Swampscott, Taunton, Tewksbury, Topsfield, Tyngsborough, Wakefield, Walpole, Waltham, Wareham, Wayland, Wellesley, Wenham, West

Newbury, Westborough, Weston, Westwood, Wilmington, Winchester, and Woburn.

Legal Division

Overview

The Legal Division staff serves as the chief legal and policy advisor to the Commission and provides legal support to all divisions of the Department. The Legal Division also serves as the Department's primary liaison with the Legislature, particularly the Joint Committee on Telecommunications, Utilities and Energy.

Division Responsibilities

Formal Adjudication

The Legal Division's primary duty is presiding over adjudicatory proceedings conducted under the Massachusetts Administrative Procedures Act (G. L. c. 30A) and the Department's procedural regulations (220 C.M.R. § 1.00 et seq.). During 2008, the Legal Division participated in the issuance of 15 Orders. A list of the Orders issued is attached at Appendix A. Adjudications are the formal determination of parties' rights through a quasi-judicial process. All parties – both the party filing the action and any intervenors – are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, and receive a written decision from the Department. Pursuant to G. L. c. 25C, § 4, the Commissioner of the Department may designate an employee of the Department to act as "Presiding Officer" at Department hearings. Adjudicatory proceedings vary in complexity and may be divided into categories including:

- Ratemaking including cable rate and telecommunication tariff orders;
- Slamming (unauthorized switch of a consumer's telecommunications service);
- Interconnection disputes between telecommunication carriers; and
- Certification of telecommunications carriers to do business within the Commonwealth

In conducting a formal adjudicatory proceeding, the Department generally holds two types of hearings: (1) a public hearing, and (2) an evidentiary hearing. Public hearings are publicized throughout the provider's service territory. In certain types of cases, public hearings are held in a provider's service territory. Public hearings are transcribed by a stenographer. If held in a provider's service territory, public hearings are typically conducted during the evening in an easily accessible public building such as the Town Hall, and are overseen by a

Presiding Officer. The public hearings afford local consumers the opportunity to learn more about a rate request, offer their input about the pending case, and comment on the practices of the provider. Residential and business customers are a valuable source of information to the Department in developing a case record.

Evidentiary hearings are conducted in a courtroom setting in the Department's Boston offices. These proceedings are also transcribed by a stenographer. A hearing officer presides over hearings, with the active participation of the Department's technical staff. The technical staff participates by questioning witnesses to ensure that the record is accurate and complete.

While the adjudicatory process does not require adherence to all formal rules of evidence, the evidentiary hearing process follows many rules of civil procedure, and parties are almost always represented by counsel.

Evidentiary hearings afford intervenors the opportunity to question witnesses. In many cases, the Attorney General of the Commonwealth is an intervenor. Other intervenors may include public interest organizations and local consumer, business, or neighborhood groups. Sometimes intervenors put on a direct case with witnesses of their own. Based on the evidence in the record, the Department issues a Final Order at the conclusion of each adjudicatory proceeding. Pursuant to G. L. c. 25, § 5, the Department's Final Order is appealable directly to the Massachusetts Supreme Judicial Court without intermediate appellate review. In certain circumstances, Department Orders may also be appealed to the Federal District Court or the FCC.

Other Types of Adjudication

Requests for Advisory Ruling

The Department is sometimes called upon to issue advisory rulings with respect to the applicability of any statute or regulation enforced or administered by the Department. The Department has discretion to decline a request for an advisory ruling. G. L. 30A, § 8; 220 C.M.R. § 2.08.44

Rulemakings

The Department conducts rulemakings pursuant to G. L. c. 30A, §§ 4-10 and 220 C.M.R. § 2.00, to adopt, amend or repeal regulations pertaining to the activities of all industries the Department is charged by statute with regulating. A rulemaking proceeding may involve simple procedural regulations or may address complex regulatory issues. The Department is required to provide public notice of a proposed rulemaking and to allow an opportunity for public comment. After consideration of the public comment, the Department may issue final

regulations. Any final regulation must be published in the Code of Massachusetts Regulations.

Consumer Division

Overview

The Consumer Division is directly supervised by the Department of Telecommunications and Cable⁴, but still handles natural gas, electric, and water complaints as well as those involving telecommunications and cable. As a result, the term “Department” will refer to either the Department of Telecommunications and Cable or the Department of Public Utilities.

The Consumer Division is responsible for enforcing and monitoring compliance with Massachusetts laws and Department regulations and policies protecting consumers of telecommunication, cable, gas, electricity, and water services. Hundreds of companies fall within the scope of the Consumer Division's regulatory authority, with the largest number in the telecommunications industry.

In fulfillment of its statutory and regulatory responsibilities in 2008 required the Consumer Division to:

- Responded to 52,284 contacts for the year;
- Investigated 7,162 complaints for the year;
- Authorized \$216,840.66 in consumer refunds;
- Held 18 informal hearings;
- Advised the Department on important consumer issues;
- Provided training for utility customer service managers;
- Approved various bill notices and billing inserts;
- Provided consumer education; and
- Compiled statistics for reporting and informational purposes;

⁴ In April 2007 the Massachusetts Department of Telecommunications and Energy was divided into two agencies: The Department of Public Utilities and the Department of Telecommunications and Cable. The Department of Public Utilities maintains jurisdiction over natural gas, electric, and water matters, while the Department of Telecommunications and Cable has jurisdiction over telecommunications and cable matters.

Division Responsibilities

Respond to Consumer Inquiries

The Consumer Division's most important duty is to respond to the roughly 200 to 300 plus contacts it receives daily concerning telecommunication, cable and utility companies. Consumers may contact the division by phone, mail, email, fax, or by visiting the office. The vast majority of consumer contacts are by telephone. Contacts to the Consumer Division are further categorized as either inquiries or referrals, for which we give information, or complaints, which we investigate as cases.

The Consumer Division operates a call management system which allows its staff to provide direct personal attention to consumer inquiries and complaints, while also allowing for automated voice activated assistance to those consumers who initially wish to reach their company. The call management system frees the Consumer Division's utility specialists to focus on calls requiring Consumer Division expertise.

Investigate and Resolve Consumer Complaints

Every telecommunication, cable or utility complaint opened by the Consumer Division must be resolved before it can be closed. If the residential consumer or the utility company is not satisfied with the investigator's resolution of a complaint either party may request an informal hearing within the Consumer Division. Parties dissatisfied with the informal written decision may request a formal adjudicatory hearing conducted by a hearing officer in the Department's Legal Division. The Consumer Division held 18 hearings in 2008.

The unauthorized switching of a consumer's telephone service provider, and more recently electric generation provider, is known as slamming and is a violation of the law. Companies that engage in slamming may be subject to a fine. The Consumer Division enforces both federal and state laws which prohibit slamming. If the Department determines that an unauthorized switch has occurred, consumers will receive a refund of any unauthorized charges that they paid. Under Massachusetts law consumers must bring telephone service slamming complaints within 90 days and electric generation service slamming complaints within 30 days.

The majority of complaints received in the Consumer Division concern billing disputes, those having difficulty paying their bills, or poor quality of service allegations. In those cases in which the utility company is found to be at fault, the Consumer Division will order the company to correct the problem and to make any necessary refunds.

Advise the Department

The Consumer Division alerts the Department to important consumer issues including significant complaint trends and new company practices which may impact consumers. Recent concerns about elderly households caring for young children and serious illness verification resulted in consumer friendly revisions to the gas, electric, and water billing and termination regulations, which were implemented in the Department's rule making.

Train Utility Managers

To ensure increased compliance with Department regulations, the Consumer Division conducts annual utility managers' meetings for both investor owned and municipal gas and electric utilities where statutes, regulations, and policies pertaining to billing, protections from shut offs, policies on abatements, and other areas of consumer protection are reviewed. Training is not limited to these meetings, however. The Consumer Division answers utility managers' questions and provides guidance on a daily basis.

Review Utility Bills and Notices

The Consumer Division reviews certain telecommunication, cable and utility company billing material and customer notices to ensure that they provide consumers with clear and accurate information.

Provide Consumer Education

In the spring and fall of 2008 the Consumer Division met with the public to inform and provide educational material about energy efficiency options, how to get help with winter heating bills, and the federally mandated switch from analog to digital television. In addition, the Consumer Division mailed these materials and brochures to public libraries and community groups.

Compile Statistics

The Consumer Division provides statistical information to the Department, utilities, government representatives and the media. The statistical complaint data compiled by the Consumer Division provides an important basis for determining whether fines should be levied against a utility for failure to meet required service quality benchmarks or whether there is a need for increased fuel assistance funding for low-income consumers. Statistical complaint data may also provide evidence of fraud or unfair trade practices, and if so this information would be shared with the state Attorney General's Office.

Appendix A

Department Orders Issued

DOCKNUM	SUBJECT	ORDISSUED
DTC 07-SL-10	Adjudicatory proceeding in the matter of complaint of Edward & Martha Leahy relative to the services provided by Qwest	2/13/08
DTC 07-11	Forms 1240 & 1205 for the Massachusetts communities currently served by Charter Communications, and Subject to rate regulation for 2007	8/14/08
DTC 08-1	FCC Form 1205 & 1240 for the communities currently served by Time Warner Cable that are subject to rate regulation.	8/14/08
06-57	AT&T Communications of New England, Inc's and Teleport Communications Group's Appeal from Denial of Motions for Protective Treatment.	8/6/08
06-6	Petition of the Town of Middlefield Board of Selectmen to the Department of Telecommunications and Energy pursuant to G.L. c. 159, § 24, regarding the quality of Verizon's telephone service.	4/30/08
07-8	Petition of VCI Company to the Department of Telecommunications and Energy for designation as an Eligible Telecommunications Carrier for the purposes of obtaining reimbursement from the Universal Service Administrative Company for provision of Lifeline	5/21/08
06-58	Appeal of SBC Long Distance, LLC d/b/a AT&T Long Distance from Denial of Motions for Protective Treatment.	12/17/08

08-4	Complaint of DSCI Corporation Re: Availability of Assume 9 Dialing Feature with COMA CSP Resale Offering	11/20/08
DTC 07-SL-11	Adjudicatory proceeding in the matter of complaint of Phillipe E. Rosier relative to the services provided by ACCXX	4/16/08
07-6	FCC Forms 1240 & 1205 for the Massachusetts communities currently served by Comcast Cable Communications, LLC, and Subject to rate regulation	11/17/08
07-10	Forms 1240 & 1205 for the Massachusetts communities currently served by Cox Communications, and Subject to rate regulation for 2007.	8/7/08
DTC 07-SL-13	Adjudicatory proceeding in the matter of complaint of Diana Reintges relative to the services provided by ACCXX Communications	4/28/08
DTC 08-2	Richmond Connections, Inc. v. Verizon new England	3/21/08
07-7a	Enhanced 911 Wire-line Surcharge for January through June 2008, Petition of the Statewide Emergency Telecommunications Board	2/8/08
07-SL-10	Complaint of Edward Leahy, filed with the Department of Telecommunications and Cable pursuant to G. L. c. 93, §§ 108 et seq., alleging an unauthorized switch of long distance service provider to ACCXX Communications.	2/13/08

Appendix B

2008 Consumer Division Statistics by Industry

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
CABLE					
	Charlemont Cable	0	0	1	\$0.00
	Charter Cable	219	153	646	\$3,873.39
	Comcast Corp.	768	1686	6085	\$13,576.97
	Cox Cable	4	7	65	\$0.00
	Other Cable	11	34		\$0.00
	RCN Cable	265	556		\$4,872.83
	Shrewsbury Cable	1	1		\$0.00
	Time Warner Cable	22	34	296	\$39.75
	Tufts Cable-Medford-Somer		1		
		1290	2472	7093	\$22,362.94
ELECTRIC					
	Nantucket Electric	1	3		\$0.00
	National Grid (Massachusetts Electric)	726	1240	5880	\$26,259.30
	Northeast Utilities (Western Mass Electric Co.)	197	392		\$1,117.45
	Nstar (Boston Edison)	854	589		\$32,181.58
	Nstar(Cambridge Electric)	11	1		\$0.00
	Nstar(Commonwealth Electric)	250	25		\$378.94
		2039	2250	5880	\$59,937.27
MUNICIPAL ELECTRIC					
	Ashburnham Municpal Elec	1			\$0.00
	Belmont Municipal Elec	4			\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Braintree Municipal Light & Cable	5	2		\$0.00
	Chester Electric			10	\$0.00
	Chicopee Municipal Elec	12	7	22	\$473.47
	Concord Municipal Elec		1	22	\$0.00
	Danvers Municipal Elec	2	2		\$0.00
	Georgetown Municipal Elec	1			\$0.00
	Groton Electric			2	\$0.00
	Groveland Electric			1	\$0.00
	Hingham Municipal Elec	2			\$0.00
	Holden Municipal Elec	3	2		\$0.00
	Holyoke Municipal Elec	2	2	9	\$0.00
	Hudson Municipal Elec	2	2	13	\$0.00
	Ipswich Municipal Elec		2	2	
	Littleton Electric			21	\$0.00
	Mansfield Municipal Elec	3	1	1	\$0.00
	Marblehead Municipal Elec		1		
	Merrimac Electric			2	
	Middleboro Municipal Elec	7	2	1	\$0.00
	Middleton Municipal Elec	3			\$0.00
	Monterey Water Co.			3	
	N. Attleborough Mun Elec	3	1		\$0.00
	Norwood Municipal Light & Cable	6	1		\$6.11
	Paxton Municipal Elec	1			\$0.00
	Peabody Municipal Elec	2	2		\$0.00
	Princeton Municipal Elec	1		4	\$0.00
	Reading Municipal Elec	1	4		\$0.00
	S. Hadley Municipal Elec	3	2	1	\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Shrewsbury Municipal Elec	3	2		\$0.00
	Sterling Municipal Elec	2			\$0.00
	Taunton Municipal Elec	35	3		\$0.00
	Templeton Municipal Elec	1		1	\$0.00
	Wakefield Municipal Elec		2		
	Wellesley Municipal Elec	2	1		\$0.00
	Westfield Municipal Elec	14	6	76	\$521.15
		121	48	191	\$1,000.73
MUNICIPAL					
	Other Municipal		1		
		0	1	0	\$0.00
GAS					
	Berkshire Gas	28	8	87	\$0.00
	Blackstone Gas	0	4		
	Keyspan (Boston Gas) National Grid	516	671	22	\$37,044.37
	Keyspan (Colonial Gas-Cape) Ngrid	48	9		\$7,466.66
	Keyspan (Colonial Gas - Lowell) Ngrid	32	13	214	\$1,694.26
	New England Gas (No.Attleboro Gas)	25	5		\$1,543.54
	New England Gas (Fall River Gas)	80	16	119	\$4,922.87
	Nisource(Baystategas)	280	220	460	\$17,521.84
	Nstar (Commonwealth Gas)	108	35		\$7,790.20
	Other Gas Co.	5	4		\$0.00
	Unitil (Fitchburg Gas & Electric)	98	37	437	\$765.23
		1220	1022	1339	\$78,748.97
MUNICIPAL GAS					
	Holyoke Municipal Gas	3	1		\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Middleborough Mun Gas	1	1		\$0.00
	Wakefield Municipal Gas		1		
	Westfield Municipal Gas	3	3		\$0.00
		7	6	0	\$0.00
SUPPLIER					
	Constellation New Energy	1	0	0	\$0.00
	Direct Energy Services, LLC	1	0	0	\$0.00
	Dominion Retail, Inc.	12	31		\$122.50
	Exelon Energy		1		
	GEXA Energy, LLC	1	0	0	\$0.00
	Glacial Energy of New England	1	0	0	\$0.00
	Horizon Power & Light	3	1	0	\$0.00
	MX Energy, Inc.	27	5		\$905.78
	Patriot Energy Group	1	0	0	\$0.00
	Spark Energy, L.P.	2			\$0.00
	Startegic Energy, Llc		1		\$1,191.29
	Unitil Resources, Inc.	5	1		\$0.00
		54	40	0	\$2,219.57
TELECOMMUNICATIONS					
	01 Communications Of Massachusetts, Llc		1		
	ACCXX Communications		1		\$0.00
	ACN	6	13		\$1,056.78
	AirNet Communications	1			\$0.00
	American Business Alliance, Inc.		2		
	American Cyber Corp. DbA Discount Plus	2			\$0.00
	America'S Tele-Network, Corp.	1	2		\$0.00
	AT&T	254	230	736	\$9,671.60

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Broadview Networks	17			\$359.00
	Business Network Long Distance	2			\$0.00
	Cavalier Telecom	2			\$0.00
	Chartel (Charter Fiberlink Telecom)	10	24		\$14.68
	Choice One Communications	5	4		\$1,060.00
	Comcast Phone, Llc	100	49	30	\$1,716.31
	Conversent Communications Of Ma, Llc	1			\$0.00
	Cordia Communications Corp.	36	34		\$401.96
	CTC Communication Corp Db a One Communications	1			\$0.00
	Essential Dotcom			31	
	Evercom Systems, Inc.	3			
	Excel/Vartec	2			\$0.00
	Fairpoint Communications	1	4		\$0.00
	Fcc	1	218		\$0.00
	Global Crossing Telecom	2			\$0.00
	Global Crossing-Frontier Comm.		1		
	Globcom,Inc		1		
	Granby Telephone Company		1	3	
	Gtc Telecom	1			\$0.00
	Idt Corporation	15	14		\$34.01
	ILD - Evercom - Talton - Invision	14	2		\$733.50
	IMR Telecom	1	2		\$0.00
	Legent Communications Corp. Db a/Long Distance	1			\$567.89
	Lightship Telecom, Llc	1			\$0.00
	Littleton Electric				
	Local Phone Company Db a Optimum Global	12	3		\$80.75

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Long Distance Consolidated Billing Company	2			
	Long Distance Wholesale Club	1			\$0.00
	Massachusetts Local Telephone Company, Inc.	5			\$0.00
	Matrix Telecom, Inc.	2			\$28.80
	MCI	24	26		\$588.59
	Metropolitan Telecommunications	1			
	Net One	1			
	North American Telephone Network, Inc.		1		
	Northstar	15	6		\$62.43
	One Communications	18	6		\$236.20
	One Touch Communications	2	1		\$0.00
	Operator Assistance Netwk	8	1		\$22.14
	Optimum Global Communications, Inc.				
	Dbas The	2			\$0.00
	Other Cocots	2	2		
	Other Telephone Co.	62	33		\$32.49
	Paetec Communications, Inc.	1			\$0.00
	Powernetglobalcommunication		1		
	Primus Telecommunications, Inc.	7	5		\$0.00
	Qwest Communications	4			\$107.57
	RCN Telephone	45	77	1924	\$497.08
	Reduced Rate Long Distance, Llc	4			\$127.94
	Richmond Telephone Company/Networx	5	2	12	\$111.03
	Silv Communications Inc.	1	1		\$276.82
	Spectrotel, Inc.	2	1		\$0.00
	Sprint	10	5	58	\$715.34
	Startec Global Communications	3			\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	
				TRANSFER	REFUND
	Taconic Telephone Corp.		1		
	Teledias Communications, Inc.	1			\$0.00
	Teleuno, Inc.	4			\$0.00
	Trinsic Communications, Inc.	1			
	TTI National, Inc.	1			\$0.00
	Twin City Capital, L.L.C.	2			\$282.95
	U. S. Telecom Long Distance	2	1		\$0.00
	United Systems Access Telecom, Inc	1			\$0.00
	Uni-Tel Communications Group, Inc.		2		
	USBI	17	2		\$214.69
	Vartec Telecom, Inc.	2	1		\$27.10
	Verizon	1341	1427	4414	\$30,430.39
	Working Assets Long Distance		1		
	XO Communications, Inc.		1		
	Zeroplus	2			\$3,045.14
		2093	2210	7208	\$52,503.18
UNREGULATED MATTER					
	Unregulated Matter	56	104		\$68.00
	Unregulated Undustry	2			\$0.00
		58	\$104.00		\$68.00
WATER					
	Aqua Water Company		1		
	Aquarion Water Company	2	1		\$0.00
	Ashmere Water Supply		1	93	
	Assabet Water			8	
	Barnstable Water Supply		1		
	Dover Water Company	2			\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	AUTOMATED	REFUND
				TRANSFER	
	East Northfield Water Co.			2	
	Housatonic Water Works	1			\$0.00
	Milford Water Company	5	2		\$0.00
	Oakes Water Company			17	
	Other Water Co.	6	6		\$0.00
	Salisbury Water Supply		1		
	Sheffield Water Company			2	\$0.00
	Southbridge Water Supply		1		
	West Stockbridge Water Co.			2	\$0.00
	Whitinsville Water Co	1			\$0.00
		17	14	124	\$0.00
Grand Total		6899	8167	21835	216840.66